

VINCENT M PALADINI
vincent.paladini@piperrudnick.com
direct 202 861 3445

May 7, 2004

RECEIVED

MAY - 7 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CG Docket No. 02-278
Staples, Inc. and Quick Link Information Services, LLC
Petition for Expedited Declaratory Ruling
and for a Cease and Desist Order

Dear Ms. Dortch:

On May 3, 2004, Staples, Inc. ("Staples") and Quick Link Information Services, LLC ("Quick Link") filed with the Commission the above-referenced Petition for Expedited Declaratory Ruling and for a Cease and Desist Order (the "Petition").

The Petition included references to an April 27, 2004 hearing before the Superior Court of Richmond County, Georgia (the "Court"), in a civil action in which Staples and Quick Link are defendants, at which the Court denied certain motions filed by Staples and Quick Link. The Petition included, as Exhibit 10, a transcript of that hearing. The Court's Order, dated April 29, 2004, disposing of matters raised in that hearing, is now available, and is submitted herewith in the interest of a complete record.

No. of Copies rec'd 0+2
List ABCDE

Kindly contact the undersigned counsel for Staples and Quick Link should there be any questions regarding this matter.

Sincerely,



Vincent M. Paladini

Enclosure

cc: Honorable Michael K. Powell
Honorable Kathleen Q. Abernathy
Honorable Michael J. Copps
Honorable Kevin J. Martin
Honorable Jonathan S. Adelstein
John A. Rogovin
Christopher Libertelli
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Barry Ohlson
K. Dane Snowden
Genaro Fullano
Mattison R. Verdery, C.P.A., P.C.
Jay D. Brownstein, Esq.
Harry D. Revell, Esq.
Kevin S. Little, P.C.

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

MATTISON R. VERDERY, C.P.A, P.C.,
individually and on behalf of all persons
and entities similarly situated,

Plaintiffs,

v.

STAPLES, INC. and QUICK LINK
INFORMATION SERVICES, LLC,

Defendants.

Civil Action File No.
2003-RCCV-728

ORDER

On April 21, 2004, the Defendants filed a pleading captioned "Defendants' Application for Temporary Restraining Order and Interlocutory Injunction and Motion for Stay of Proceedings for Lack of Subject Matter Jurisdiction" (the "Motion"). Following the issuance of a Rule Nisi, a hearing was conducted on April 27, 2004. At the hearing, Plaintiff objected to the form of the Rule Nisi and the lack of response time required by the Georgia Civil Practice Act with respect to Defendants' motion for interlocutory injunction and motion for stay. The Court ruled that the hearing would proceed solely on Defendants' application for a temporary restraining order and not on the other relief sought in the Motion.

After considering the Motion and the arguments of counsel, and following a review of the applicable law and the record in this case, the Court concludes that the substantive relief sought by Defendants is not a restraining order or injunction under O.C.G.A. § 9-11-65. Rather, it is clear from a review of the Motion and the record that the relief sought in the Motion is identical or substantially similar to the relief sought by

Defendants in their Motion for Summary Judgment filed on November 25, 2003. There, Defendants urged, among other things, that Plaintiff's complaint should be dismissed on the basis that subject matter jurisdiction over the validity of orders of the Federal Communication Commission ("FCC") rests exclusively in the federal courts of appeals—precisely the same argument made by Defendants in the present Motion. The Defendants' jurisdictional argument was rejected by the Court as evidenced by the March 24, 2004 order denying the Defendants' motion for summary judgment. That denial of summary judgment is presently the subject of a motion for reconsideration presently scheduled for hearing on May 10, 2004 before the Honorable William M. Fleming, Jr.

Under Georgia law, it is the substance, not mere nomenclature that controls pleadings, motions and orders. Pleadings are to be judged by their function and not the name given by a party. Duke v. Buice, 249 Ga. App. 164 (2001). The obvious function of the Motion is to request a legal determination that this Court is without subject matter jurisdiction over Plaintiff's claims. That same contention was previously raised by Defendants as a part of their summary judgment motion. Since the Court's denial of summary judgment is presently under reconsideration it would be improper for this Court to address those same contentions now, especially since doing so could result in inconsistent and even contradictory rulings.

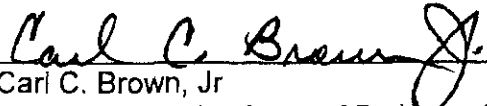
For the foregoing reasons, the Court does not accept or treat the Motion as one for a temporary restraining order and injunctive relief. Instead, the Court must treat the Motion substantively for what it is—a motion for reconsideration of the denial of summary judgment and/or a motion to dismiss Plaintiff's cause of action for lack of

subject matter jurisdiction. In neither instance is the issuance of a temporary restraining order an appropriate remedy.

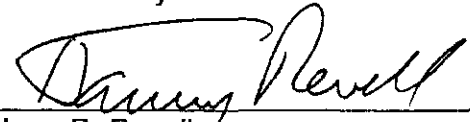
This conclusion is especially true in light of the fact that the Motion was not verified, there was no evidence introduced into the record showing the purported irreparable harm that would befall Defendants if a restraining order did not issue; and the Defendants failed to show a likelihood of success on the merits of their claim that the Court lacks subject matter jurisdiction in this case. Thus, even if the Court were to consider the motion as one for a restraining order, the requirements for the granting of such extraordinary relief have not been satisfied.

For the foregoing reasons, the relief sought by Defendants is hereby **DENIED**.

So Ordered this 29th day of April, 2004


Carl C. Brown, Jr.
Judge of Superior Court of Richmond County

Presented by:

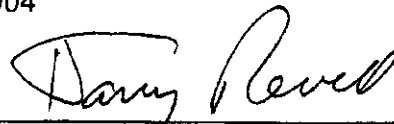

Harry D. Revell
State Bar No. 601331
Attorney for Plaintiff

Certificate of Service

This is to certify that I have served the within and foregoing upon the following by
U. S. Mail prior to filing.

Mark D. Lefkow, Esq
Nall & Miller, LLP
Suite 1500, North Tower
235 Peachtree Street, NE
Atlanta, Georgia 30303-1401

This 29th day of April, 2004



HARRY D REVELL